

**DONTZIN NAGY & FLEISSIG LLP**

980 Madison Avenue | New York, New York 10075 | (212) 717 - 2900

Gregory N. Wolfe  
greg@dnfllp.com**VIA ECF**

October 25, 2023

Hon. Kevin P. Castel  
 United States District Court Judge  
 Southern District of New York  
 500 Pearl Street, Courtroom 11D  
 New York, NY 10007

**Re: *Sphere 3D Corp. v. Gryphon Digital Mining, Inc.*, 1:23-cv-02954-PKC**

Dear Judge Castel:

We represent Plaintiff Sphere 3D Corp. (“Sphere”) and Third-Party Defendant Patricia Trompeter (together, “Counter-Defendants”). We write pursuant to this Court’s Individual Practices to request a pre-motion conference on Counter-Defendants’ anticipated motions to dismiss Gryphon Digital Mining, Inc.’s (“Gryphon”) defamation, negligence, and implied covenant claims. No conference is presently scheduled before the Court.

As the Court is aware, Counter-Defendants filed a pre-motion letter on August 31, 2023 (the “August 31 Letter”) explaining why the defamation, negligence, and implied covenant claims are insufficiently pleaded, and, in the case of Ms. Trompeter, why there is no personal jurisdiction over her in this Court. Dkt. 31. After the Court permitted the parties to amend their respective pleadings, Gryphon filed its Amended Answer on October 11, 2023. Dkt. 38. Despite being granted the opportunity to amend its pleading in response to the August 31 Letter, Gryphon did not materially amend the allegations supporting the defamation, negligence, and implied covenant claims.<sup>1</sup> Those claims should be dismissed for substantially the same reasons set forth in the August 31 Letter, a copy of which is attached as Exhibit A.

Because they are filing two motions, Counter-Defendants respectfully request that they be granted leave to file motions on behalf of Sphere and Ms. Trompeter fourteen (14) days from the date the Court grants leave to file; that Gryphon be given twenty-eight (28) days to oppose; and that Counter-Defendants be given fourteen (14) days to reply.

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We are available to discuss these issues at your Honor’s convenience.

Respectfully submitted,

*Gregory N. Wolfe*  
 /s/ Gregory N. Wolfe

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<sup>1</sup> Instead, the added allegations are designed to enhance Gryphon’s breach of contract claim, which Sphere will show is without merit with the benefit of a full factual record.